



FEB 2 1945

CHARLES ELMORE GROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 731

JOHN W. HAYS AND SARAH R. HAYS,
Petitioners,

v.

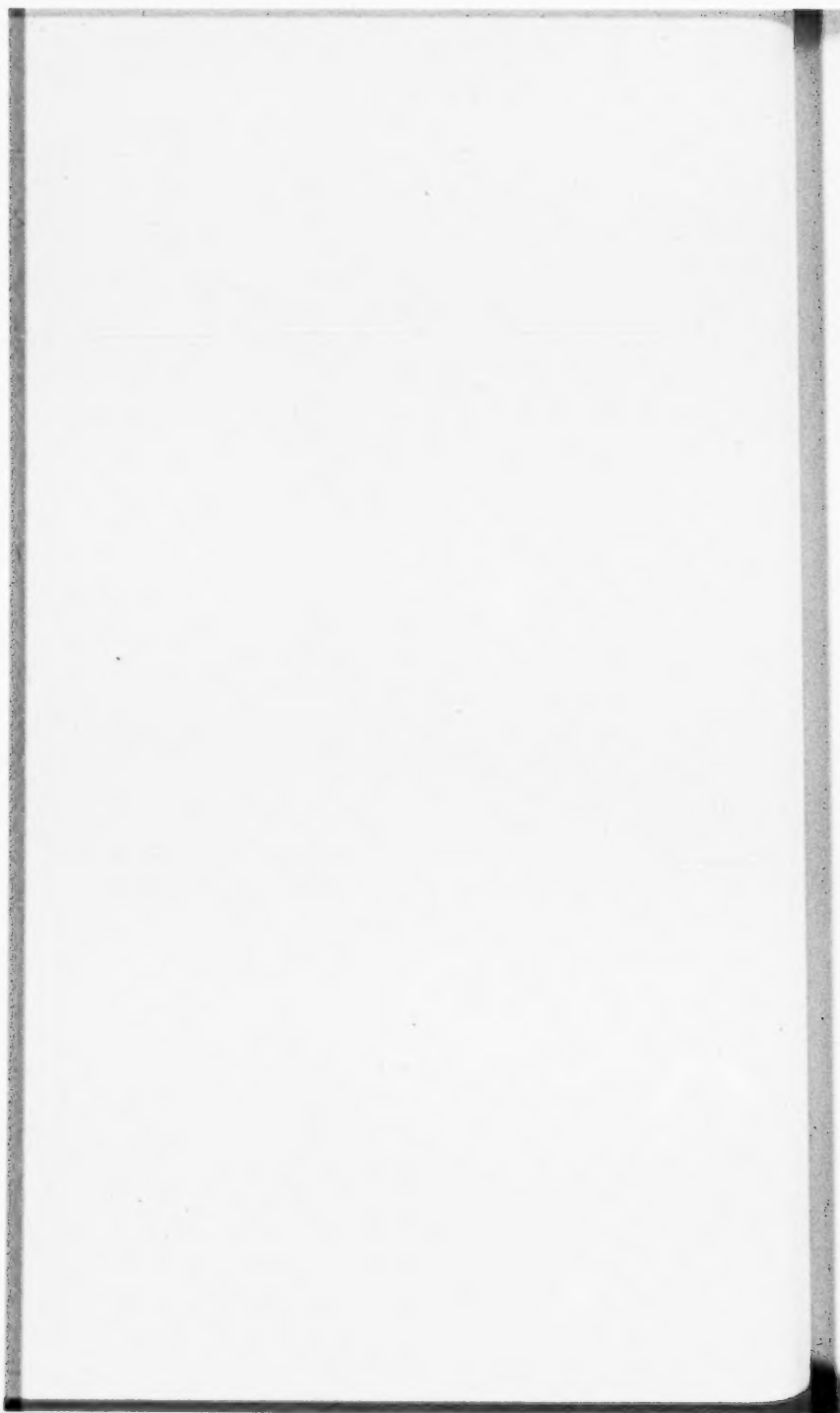
CATHERINE FARRINGTON, PARKER M. WOOD, WILLIAM L.
BECKTOLD, WALTER M. WARREN AND LYMAN E. WARREN,
Respondents.

PETITION FOR A RECONSIDERATION OR REHEARING AND REASONS THEREFOR

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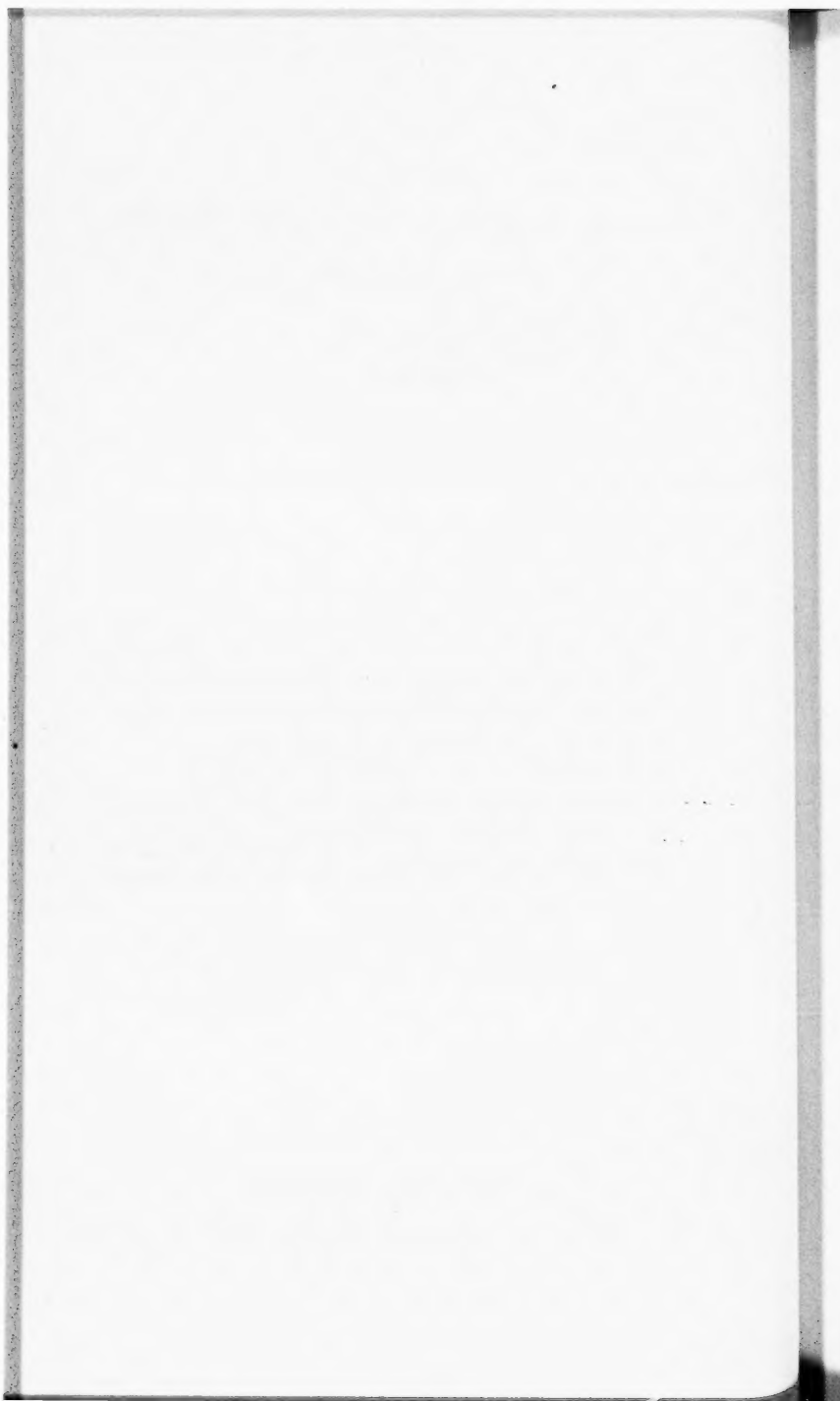
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**PETITION FOR A RECONSIDERATION OR
REHEARING**

*To the Honorable, the Chief Justice and the Associate Jus-
tices of the Supreme Court of the United States:*

Come now the petitioners herein and present this petition for a reconsideration or rehearing and for the vacating of the judgment of this Court denying their Petition for a Writ of Certiorari to the Supreme Court of Missouri.

JURISDICTION

The judgment of this Court herein prayed to be reconsidered was entered on the 8th day of January, 1945. This petition for a reconsideration or rehearing is filed within twenty-five days from January 8, 1945, in accordance with Rule 33 of this Court.

REASONS FOR PETITION

- 1. The Record Clearly Reveals Denial of Equal Protection of the Law By a Decree of a State Court Arbitrarily Depriving Some Members of a Class of Property and**

at the Same Time Securing Other Members of the Same Class in Property of Identical Derivation and Equitable Cognizance.

The essential facts appear in the decree of the trial court and are not in dispute. By a deed dated December 16, 1940, and recorded December 24, 1940, Marie Halbrecht, a "straw party" employed as a clerk in the office of John W. Hays, "had acquired title to said property for the use and benefit of the defendant, John W. Hays, and had taken title thereto in her name at the special instance and request of said Hays as a matter of convenience for the said Hays." (R. 273.)

Thereafter, "on or about December 20, 1940, defendant, John W. Hays, entered into a written contract with the defendant, Lloyal M. Burton, under the terms of which the title to the said real estate was to be held in the name of the said Lloyal M. Burton and Rosalyn R. Burton, his wife, until such time as the real estate had been surveyed at which time the said defendants, Lloyal M. Burton and Rosalyn R. Burton, were to transfer by warranty deed to defendants, John W. Hays and Sarah R. Hays, his wife, the western two and one-half acres of said plot, retaining title to the Eastern two and one-half acres." (R. 274.)

Pursuant to this contract John W. Hays caused the record owner and straw party, Marie Halbrecht, to transfer title by deed to Lloyal M. Burton and Rosalyn R. Burton (R. 274). Subsequently, but before this deed was recorded, Marie Halbrecht contracted to sell the property to respondents, thus creating the controversy out of which this litigation rises.

The decree also recognizes the effect of the above outlined transactions prior to Marie Halbrecht's attempted sale to respondents as vesting in Lloyal M. Burton and Rosalyn R. Burton beneficial interest in the undivided eastern half of the property, and vesting in John W. Hays and Sarah R. Hays beneficial interest in the undivided western half of the property (R. 275, 276). The nature of these

interests will be considered hereinafter. But the important consideration at this juncture is that the property interests of Mr. and Mrs. Burton and Mr. and Mrs. Hays, recognized as such by the trial court, derive from a single contract and were created in similar language purporting to confer and conferring interests of identical character upon each of these four persons.

It is all important to the demonstration of the denial of equal protection of the laws here that a single instrument has used the same language to vest similar undivided interests in one tract of land in these four persons. In this way a class was defined, each member of which stood in the same position with reference to his interest in a single subject of property.

The nature of the interests thus created is clear and undisputed under the law of Missouri. Each of these four persons enjoyed an estate by the entirety in an undivided one-half of the tract. *Hernandez v. Prieto*, 349 Mo. 658, 162 S. W. (2d) 829 (1942) contains the most recent statement of well settled Missouri law concerning the creation of equitable estates by the entirety. There the court considered the effect of an agreement in which a husband contracted with the owner of land to buy property in the names of himself and his wife. However, title was in fact conveyed to the husband alone. Subsequent controversy having arisen concerning the interest of the wife, the court held that the wife enjoyed an equitable estate by the entirety, even though the husband paid the entire consideration for the property, saying:

"In this case the appellant purposely put his wife's name in the contract of purchase, thereby creating an equitable estate by the entirety. If it were true that the appellant paid the entire purchase price under the contract, a resulting trust in his favor would not arise, because he does not claim that he did not purposely cause his wife's name to be put in the contract of purchase. This is true even though he did not under-

stand the full legal effect of his act.'" (162 S. W. (2d) at 831.)

The State of Missouri recognizes the characteristic incident of an estate by the entirety that each tenant is seized of the whole estate and neither has power of encumbrance or alienation without the assent and concurrence of the other. "It is now well settled that where property is held by husband and wife as tenants by the entirety, any act affecting title must be by the joint act of both husband and wife." See *Wilson v. Tower*, 155 S. W. (2d) 502, 504 (Ct. App. 1941). Accord: *Baker v. Lamar*, 346 Mo. 258, 140 S. W. (2d) 31; *Magidson v. Stern*, 235 Mo. App. 1039, 148 S. W. (2d) 144.

Thus, Lloyal M. Burton, Rosalyn R. Burton, John W. Hays and Sarah R. Hays in the present case were so situated that no conduct of one of them could burden or alienate the estate or any portion of it without the consent of his or her spouse. Such was the situation when the straw party who had remained record owner attempted to sell the tract to the respondents. It is not even contended by respondents and nowhere is suggested in the record that any of the four beneficial owners other than John W. Hays had acted in any way which could be construed as acquiescence in the attempted sale. The Burtons expressly refused to sell and Sarah R. Hays did not even know of the negotiations with respondents.

With three members of a class thus in the same legal position, the trial court decreed that two of them, the Burtons, be protected in their estate by the entireties, but that the third, Sarah R. Hays, be divested of her estate by the entireties. "The equal protection clause means that the rights of all persons must rest upon the same rule in similar circumstances * * * and * * * applies to the exercise of all powers of the state which can affect the individual or his property." See *Louisville Gas & Electric Co. v. Coleman*, 277 U. S. 32, 37. Here the arbitrary differentiation

between persons similarly situated is so clear as to make it appropriate that the writ of certiorari issue.

2. Petitioner Sarah R. Hays has been Deprived of Property Without Due Process of Law and Denied the Equal Protection of the Laws in that the State has Taken Her Property from Her Without Compensation.

That Sarah R. Hays had an equitable estate by the entirety in the land in question has already been demonstrated. That she neither did anything adverse to her interest nor omitted anything which she should have done to protect her property, is also clear and undisputed in the record. That the respondents have contracted with Marie Halbrecht to buy the property for \$5,250.00 is sufficient to establish substantial value.

Yet, the decree of the trial court divesting Sarah R. Hays of her valuable property grants her neither any part of the purchase price nor any compensation whatever (R. 271 ff.). No act, no fault, no omission of Sarah R. Hays is charged, proved or found to have occurred. She has been deprived of her property arbitrarily and at the same time denied all compensation for it. If the Fourteenth Amendment is to have any meaning with reference to the property rights of the individual, it must protect him from such arbitrary taking and confiscation without any compensation. Cf.: *Chicago, Burlington & Quincy R.R. v. Chicago*, 166 U. S. 226.

3. Petitioners Have Made Timely and Persistent Claim of Invasion of Constitutional Right.

The denial of constitutional right herein asserted resulted from the decree of the trial court. Thus, although the answer of Sarah R. Hays gave notice of reliance upon her estate by the entirety and the absence of authority to divest her of that estate (R. 16), there was no occasion to anticipate any constitutional issue. Promptly, however, after

decree petitioners, in paragraphs 7 and 10 of their motion for a new trial challenge the decree as a deprivation of constitutional rights.

"7. That the finding and judgment of the Court are in conflict in this regard, to-wit:

"That the court upholds the contract between Lloyal M. Burton and John W. Hays as the same relates to the interest of Lloyal M. Burton and Rosalyn R. Burton in said lands, and fails to uphold said contract as the same relates to the interest of the defendant Sarah Hays.

"19. Defendants say that the judgment of the court deprives them, and each of them of their property without due process of law, and denies to them, and each of them, the equal protection of the laws, contrary to the Fifth Amendment of the Constitution of the United States and the Fourteenth Amendment thereof, and contrary to the 'due process' and 'equal protection' clauses of the Constitution of Missouri." (R. 280, 281.)

Upon the overruling of this motion, petitioners noted and preserved appropriate exceptions (R. 282). They briefed and argued the constitutional issue before the Supreme Court of Missouri. Although the decision of that court does not discuss any federal question, the affirmance of the contested judgment necessarily involves a decision adverse to petitioners upon their constitutional challenge of the judgment's validity. A federal question thus raised, preserved and adjudicated is reviewable in this Court. Cf.: *Chicago, Burlington & Quincy R.R. v. Chicago*, *supra*.

CONCLUSION

The record reveals state action so patently and grossly depriving petitioners of property in violation of the protection guaranteed by the Fourteenth Amendment that this Court should reconsider its refusal to review the action of the courts of Missouri.

Respectfully submitted,

GEO. V. VAUGHN
CHARLES H. HOUSTON
WILLIAM H. HASTIE

I, William H. Hastie, attorney for the petitioners, John W. Hays and Sarah R. Hays, do hereby certify that the foregoing petition for rehearing of this cause and for vacating the order denying a writ of certiorari is presented in good faith and not for the purpose of delay.

WILLIAM H. HASTIE